

FILED  
MAY - 4 2005

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

3 HOME BUILDERS ASSOCIATION )  
4 OF NORTHERN CALIFORNIA, et al. )  
5 Plaintiffs, )  
6 v. )  
7 UNITED STATES FISH AND )  
WILDLIFE SERVICE, et al. )  
8 Defendants. )  
9 \_\_\_\_\_ )

Civil No. 01-5722 AWI SMS

STIPULATION AND  
[REDACTED] ORDER

10 WHEREAS, Plaintiffs brought this action under the Endangered Species Act (ESA) to  
11 challenge the Federal Defendants' designation of critical habitat for the Alameda whipsnake;

12 WHEREAS, on May 9, 2003, this Court granted Plaintiffs' motion for summary judgment  
13 and vacated and remanded the final rule designating critical habitat for the Alameda whipsnake;

14 WHEREAS, on June 25, 2004, this Court granted Plaintiffs' motion for attorney's fees, but  
15 did not resolve the amount;

16 WHEREAS, Plaintiffs and Federal Defendants agree that it is in the interest of the parties and  
17 judicial economy to settle Plaintiffs' claim for attorneys' fees and costs in this action without further  
18 litigation; and

19 WHEREAS, the parties enter this Stipulation without any admission of fact or law, or waiver  
20 of any claims or defenses, factual or legal.

21 NOW, THEREFORE, the parties hereby Stipulate and Agree as follows:

22 1. In accordance with the ESA, 16 U.S.C. §1540, Rule 7, F.R.C.P., and the prior rulings  
23 of this Court, parties move this Court to approve this stipulation and enter it as an Order.

24 2. Federal Defendants agree to settle Plaintiffs' claim for attorneys fees and costs in this  
25 matter for a total of \$186,141.00. Federal Defendants will issue a check in that amount or, as  
26 appropriate, make a wire transfer to the account specified by Plaintiffs' counsel.

27 3. Plaintiffs agree to accept payment of \$186,141.00 in satisfaction of any and all claims  
28 for attorneys' fees and costs to which Plaintiffs are entitled in the above-captioned litigation.

1 However, any future litigation over the final rule and critical habitat determination for the Alameda  
2 whipsnake will be the subject of a separate complaint, and this stipulation and order does not affect  
3 any future claims for attorney's fees based on any future litigation.

4       4. Federal Defendants agree to submit all necessary paperwork to funding authorities  
5 at the Department of the Treasury within ten (10) business days of receipt of the signed court order.  
6 approving this stipulation.

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Respectfully submitted,

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10 FOR PLAINTIFFS

*M. Reed Hopper*

5/2/2005

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KELLY A. JOHNSON, Acting Assistant Attorney General  
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FOR FEDERAL DEFENDANTS

*KW Rizzardi*

4/27/2005

KEITH W. RIZZARDI, Trial Attorney  
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Environment & Natural Resources Division  
U.S. Department of Justice  
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APPROVED and hereby ORDERED by this Court, this 4<sup>th</sup> day of May, 2005.

*A. Khan*

U.S. District Court Judge